

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. 1:12-CR-00091</b>
	:	
v.	:	<b>(Chief Judge Conner)</b>
	:	
<b>JOSE CRUZ</b>	:	

**ORDER**

AND NOW, this 4th day of December, 2013, upon consideration of petitioner Jose Cruz's motion (Doc. 735) to vacate, set aside, or correct the sentence imposed by this court on May 31, 2013, and it appearing that Cruz filed the motion pursuant to 28 U.S.C. § 2255,<sup>1</sup> which is subject to a one-year statute of limitations from the date on which the judgment of conviction becomes final, see 28 U.S.C. § 2255(f)(1); Kapral v. United States, 166 F.3d 565, 570-71 (3d Cir. 1999) (holding that a judgment does not become final under 28 U.S.C. § 2255 until (1) the appellate court or the Supreme Court decides upon a timely filed direct appeal or petition for certiorari, or (2) the defendant's time for filing a direct appeal or petition for certiorari expires), and it further appearing that Cruz filed a direct appeal from the judgment on June 12, 2013, which remains pending before the Third Circuit, and the court concluding that it will not review a collateral motion for relief pursuant to 28 U.S.C. § 2255 while an appeal is pending in a court of appeals or the Supreme Court, see Kapral, 166 F.3d at 570 ("[A] collateral attack is generally inappropriate if the

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<sup>1</sup> Under 28 U.S.C. § 2255, "[a] prisoner in custody under sentence of a [district] court . . . claiming . . . that the sentence was imposed in violation of the Constitution or laws of the United States . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence."

possibility of further direct review remains open.”); United States v. Frady, 456 U.S. 152, 165 (1982) (stating that a collateral challenge may not act as a substitute for an appeal), it is hereby ORDERED that the motion (Doc. 735) to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255 is DISMISSED without prejudice.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania